Superior Rig Manufacturing of Louisiana, Inc. *and* **United Paperworkers International Union, AFL-CIO.** Case 15-CA-8399

March 31, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

Upon a charge filed on December 2, 1981, by United Paperworkers International Union, AFL-CIO, herein called the Union, and duly served on Superior Rig Manufacturing of Louisiana, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 15, issued a complaint on December 4, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Subsequently, Respondent filed an answer, admitting in part and denying in part, the allegations of the complaint.

With respect to the unfair labor practices, the complaint alleges in substance that on September 14, 1981, following a Board election in Case 15-RC-6762, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;[1] and that, commencing on or about November 13, 1981, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On or about December 17, 1981, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On December 24, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on December 31, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed an "Opposition to Motion for Summary Judgment and Response to Board's Notice To Show Cause."

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint, Respondent admits that it has refused to recognize, meet, and bargain with the Union but it contests the validity of the Board's certification of the Union in the underlying representation proceeding. It denies that the Union is, in fact, the proper representative for collective-bargaining purposes of the employees in the appropriate unit, and it denies that an "uncoerced" majority of the employees selected the Union in the election in the underlying proceeding.

In its opposition to the General Counsel's Motion for Summary Judgment, Respondent further argues that the election held herein should have been set aside because of the Union's promise of financial and other rewards to some employees; because of the Union's coercion and threats of retaliation against other employees; because of the efforts of company supervisors on behalf of the Union; and because of the atmosphere of fear and coercion brought about by the Union due to an election day rumor that company supporters would be physically assaulted if the Union lost the election. Respondent also argues that, in overruling various of its election objections, the Regional Director had made credibility resolutions which warrant a hearing, or ignored the fact that certain objections raised material facts which warranted a hearing. While acknowledging that it is the Board's usual practice not to allow in a refusal-to-bargain proceeding relitigation of issues that were litigated in a prior representation proceeding, Respondent requests the Board to do so in this case.

Our review of the record herein, including the record in Case 15-RC-6762, reveals that on February 27, 1981, the Regional Director for Region 15 approved a Stipulation for Certification Upon Consent Election entered into by Respondent and the Union concerning the unit involved in this proceeding. Thereafter, on April 2, 1981, an election was conducted under the direction and supervision of the Regional Director for Region 15 among the employees in the unit found appropriate. The tally of ballots indicated that, of 77 eligible voters, 40 cast ballots for, and 33 cast ballots against, the Union. There were three challenged ballots, an insufficient number to affect the results of the election.

[1] Official notice is taken of the record in the representation proceeding, Case 15-RC-6762, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

Thereafter, on April 8, 1981, Respondent filed objections to the election in which it contended that the Union had interfered with the laboratory conditions by offering financial benefits and other rewards; that employees were coerced and restrained by the Union through threats of economic loss, physical harm, or other retaliation if they did not support the Petitioner; and that the election was tainted with supervisory interference. After an investigation of those objections, the Regional Director, on May 29, 1981, in a report on objections, recommended overruling all of Respondent's objections and certifying the Union as the exclusive bargaining representative of the employees in the unit found appropriate. The Regional Director concluded that Respondent's objections raised no substantial or material issues affecting the results of the election; he also denied Respondent's request for a hearing on the objections. On June 12, 1981, Respondent filed exceptions to the Regional Director's report and the Union filed a response to those exceptions. On September 14, 1981, the National Labor Relations Board issued a Decision and Certification of Representative (not included in bound volumes of Board Decisions) adopting the Regional Director's findings and recommendations certifying the Union as the exclusive bargaining representative of the employees in the appropriate bargaining unit. The Board also denied Respondent's request for a hearing as it found the exceptions raised "no material or substantial issues of fact or law" warranting a hearing.

As previously noted, Respondent, in its opposition to the Motion for Summary Judgment, alleges that the organizational process was tainted by the Union's promise of financial and other rewards to some employees; by the Union's coercion and threats of retaliation against other employees; by the efforts of company supervisors on behalf of the Union; and by the atmosphere of fear and coercion brought about by the Union due to the election day rumor that company supporters would be physically assaulted if the Union lost the election. These issues were considered and disposed of in the underlying representation proceeding. As Respondent acknowledges, it is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.[2]

[2] See *Pittsburgh Plate Glass Co.* v. *N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor do we find here any special circumstances which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is a Louisiana corporation with a facility located in DeRidder, Louisiana, where it is engaged in the manufacture and sale of oil field masts, derricks, and substructures. During the 12 months preceding the issuance of the complaint, a representative period, Respondent in the course and conduct of its business operations purchased and received goods and materials valued in excess of $50,000 directly from points located outside the State of Louisiana.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

United Paperworkers International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All production and maintenance employees, including plant clerical employees, employed by Respondent at its facility located in DeRidder, Louisiana; excluding all office clerical employees, truckdrivers, guards, watchmen and supervisors as defined in the Act.

2. The certification

On April 2, 1981, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 15, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on September 14, 1981, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about October 31, 1981, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about November 13, 1981, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since November 13, 1981, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Superior Rig Manufacturing of Louisiana, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Paperworkers International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees, including plant clerical employees, employed by Respondent at its facility located in DeRidder, Louisiana; excluding all office clerical employees, truckdrivers, guards, watchmen and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since April 2, 1981, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about November 13, 1981, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Superior Rig Manufacturing of Louisiana, Inc., DeRidder, Louisiana, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with United Paperworkers International Union, AFL-CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All production and maintenance employees, including plant clerical employees, employed by Respondent at its facility located in DeRidder, Louisiana; excluding all office clerical employees, truckdrivers, guards, watchmen and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its facility in DeRidder, Louisiana, copies of the attached notice marked "Appendix."[3] Copies of said notice, on forms provided by the Regional Director for Region 15, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 15, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

[3] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with United Paperworkers International Union, AFL-CIO, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

> All production and maintenance employees, including plant clerical employees, employed at our facility located in DeRidder, Louisiana; but excluding all office clerical employees, truckdrivers, guards, watchmen and supervisors as defined in the Act.

SUPERIOR RIG MANUFACTURING OF LOUISIANA, INC.

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